

By
DOUGLAS F. YOUNG, Clerk
Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

DEC 11 2018
FILED
US DISTRICT COURT
WESTERN DIST ARKANSAS

KRYSTAL MEGAN DELIMA

Plaintiff

VS.

CASE NO. 17-5244

WAL-MART STORES ARKANSAS, LLC.

Defendant

**PLAINTIFF'S MOTION TO SUPPRESS ALL PARTS OF KRYSTAL
MEGAN DELIMA DEPOSITION TRANSCRIPT**

Comes, now Plaintiff and filed this Motion to Suppress all parts of plaintiff's deposition transcript that was taken on 10/18/2018. Plaintiff is in Objection to the use of this transcript in any court proceeding evidence on the grounds that the officer who conducted the deposition had obtained the transcript of plaintiff's testimony through violations under Federal Rules of Civil Procedures Rule-30. Plaintiff's brief in support had described all the the violations and the attached exhibits were identified in support for this motion to suppress. Defendant's violated deponent's rights under the Federal Rules of Civil Procedure was detrimental to plaintiff's case. Defendant's used of the deposition adversely obtained and used it against plaintiff to support defendant's motion for summary judgment was detrimental to plaintiff's case.

Plaintiff believes that sanctions are also available under the law. See, for example, *United States v National Medical Enterprises, Inc*, 792 F2d 906,910 (9th Cir 1986) (allowing Rule 37(b) sanctions under the assumption, without comment, that protective order violations fall

within the Rule's authority to sanction "if a party fails to comply with a discovery order");

Falstaff Brewing Corp v Miller Brewing Co, **702 F2d 770, 784** (9th Cir **1983**) (upholding Rule **37(b)** sanctions for a protective order violation without discussing the Rule's applicability to protective orders).

Violation under Rule 30 (b) (5)- Officer's Duties:

1. Motion to Suppress is appropriate when the testimony is the product of unreliable principles and methods; and the transcript is not accurate and trustworthy due to violations to deponent's rights during the deposition when the deposition officer violated FRCP – Rule 30 (b) (5) Officer's Duties.
2. On 10/18/2018, Defendant's counsel conducted a deposition of Plaintiff, Krystal Megan Delima, at the office of Mitchell, Williams, Selig, Gates, & Woodyard PLLC. At 4206 South J. B. Hunt Drive Suite # 200 Rogers, Arkansas 72758. During the deposition, the officer, Atty. Crawford, failed to perform its duties and violated several rules under **FRCP 30 (b) (5) Officer's Duties** as stated below:
 - a. **Under the Rule 30 (b) (5)(A) (i)**, the officer did not state on the record the business address.
 - b. **Under the Rule 30 (b) (5) (A) (ii)**, the officer did state on the record the time, and place where the deposition was conducted.
 - c. **Under the Rule 30 (b) (5) (A)(v)**- the officer did not identify all persons present.

Attached in plaintiff's brief in support is the Certified Transcript of the Deposition of the Krystal Megan Delima on 10/18/2018, as Plaintiff Exhibit 32.

d. **FRCP 30 (b) (5) (C)**- *After the Deposition. At the end of a deposition, the officer must state on the record that the deposition is complete and must set out any*

stipulations made by the attorneys about custody of the transcript or recording and of the exhibits, or about any other pertinent matters.

d-1. At the end of a deposition, the officer did not state on the record and did not set out the custody of the transcript or recording or about any other pertinent matters. The defendant's officer did not state on the record that, Alexander Real Time Reporting and its address, that this company is going to be involved in the transcription and handling of plaintiff's deposition.

Attached in plaintiff's brief in support is Page 129 of plaintiff's deposition, as Plaintiff Exhibit -33

VIOLATIONS UNDER PROTECTIVE ORDER-FRCP-Rule 26 (c) (E) (F) (H)

3. OTHER REASONS WHY ALL PARTS OF THE DEPOSITION TRANSCRIPT OF KRYSTAL MEGAN DELIMA MUST BE SUPPRESSED

- a. On 10/29/2018, the defendant filed a Motion for Summary Judgment and supported its motion with Uncertified Rough Draft Transcript of plaintiff, Krystal Megan Delima. Plaintiff on that time was not yet given the chance to see and read the transcript. During the deposition, plaintiff requested a copy of the transcript and also inquired of the amount to purchase it. On 10/29/2018, plaintiff emailed and inquired if the transcript is already available, but the stenographer, Stevi Way, responded on her email that the transcript was not ready and cannot quote the amount until it was done. The plaintiff has not yet been given the chance to read the transcript but defendant already filed the Uncertified Rough

Draft Transcript of plaintiff's deposition to support its motion for summary judgment. Another company, Alexander Real Time Reporting LLC, was claiming that they have plaintiff's transcript and emailed plaintiff. The officer did not disclosed that information at the end of the deposition and was not stated on the record. Deponent's protected private and confidential information had been exposed and deponent's transcript has been passed around from one hand to the other. Deposition's integrity has been compromised and the testimony is unreliable and untrustworthy for use in evidence. .

- b. **Federal Rules Of Civil Procedure –Rule 32 (d) (4)-** *To Completing and Returning the Deposition. An objection to how the officer transcribed the testimony—or prepared, signed, certified, sealed, endorsed, sent, or otherwise dealt with the deposition—is waived unless a motion to suppress is made promptly after the error or irregularity becomes known or, with reasonable diligence, could have been known.*
- c. Plaintiff had been diligent and corrected some errors and was able to submit 8-paged ERRATA SHEET before the 30 days as allowed under Federal Rules of Civil Procedure Rule 32-(d) (4)and there are 56 changes and out them, are 32 changes are because transcription dropped the correct words and added new words and plaintiff was able to put them back into the Errata Sheet. Few of them were wrong spelling, and some plaintiff's corrections were due to compound questions and confusions, confilcts and inconsistencies. Plaintiff made the changes for clarifications and completeness to plaintiff's testimony. Each

separate change was supported with reason or reasons and plaintiff certified, signed, dated and have it notarized and was sent to Alexander Realtime Reporting LLC., on 11/27/2018 and was confirmed that it was received on 11/28/2018.

4. The behavior of the offender goes beyond transgression of the rules, but the transgression was for the purpose of producing evidentiary materials to support its Motion for Summary Judgement. The extent that the defendant had obtained the testimony in bad faith, to which the violations prejudiced plaintiff when such evidence is sought to be offered against plaintiff. Defendant has been rampant in violating procedural requirement in obtaining evidences that they can use to support their claims. Defendant claimed it did not break any policy in preserving a video for the injury incident because defendant had saved a video and therefore it followed the policy of preserving the video. But the defendant is showing a video not the scene of the incident where the injury occurred, the police incident report can clearly contradict that. Likewise, defendants violation in obtaining the testimony from plaintiff to use against plaintiff and support it to defendant's motion for summary judgment obtained through violations and transgressions of the deponents rights under the Federal Rules of Civil Procedure Rule 30 (b) (5) (A) or whether it was violating production requirements to file supportive documents in support for its motion for summary judgment under Rule 56 (c) or obtaining testimony from violating the Federal Rules of Civil Procedures. Plaintiff has to point out defendant's violations so that the Court can provide proper remedy to have defendant obey the laws and not violate them.

5. Defendants had abused its discretion and violated deponent's rights under FRCP -Rule 30 (b) (5) (A) (i), (ii), and (v) and FRCP 30 (b) (5) (C). Defendant's violations to the above rules rendered plaintiff testimony unreliable and untrustworthy to be used in evidence and plaintiff's deposition transcript must be suppressed due to the above reasons as stated.

6. **The defendant's officer had also violated under the Protective Order under the FRCP-Rule 26 (c) (E) (F) (H). The defendant had violated plaintiff's protective order of medical information, financial, private information, and other privacy and confidential related matters, passing around plaintiff's deposition without plaintiff permission or without the court's permission. Plaintiff's private and confidential information had exposed and defendant violated the privacy of health information.**

7. The defendant's officer who conducted the deposition, Atty. Bryce Crawford had been instructed by Alexander Realtime Reporting LLC. to attach the Errata Sheets of Krystal Megan Delima to its original transcript.. **Attached is Plaintiff Exhibit 35.**

Attached to Plaintiff's Brief in Support for Plaintiff's Motion to Suppress are the following:

1.) Plaintiff Exhibit 20, 20a, 20b, 20c, 20d, 20e- Affidavit of Witness, by Zenith Hazel J. Delima Thompson.

2.) Plaintiff Exhibit 24- Defendant's document filed on 10/29/2018 to support defendant's motion to summary judgment, quoted excerpt from Uncertified Rough Draft of Krystal Megan Delima's deposition.

3.) Plaintiff Exhibit 25- Gmail email communication by Stevi Way, the stenographer that recorded the deposition stating the transcript was not ready.

4.) Plaintiff Exhibit 26- Sales Invoice- from Alexander Realtime Reporting LLC.

Plaintiff paid to receive the transcript.

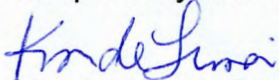
5.) Plaintiff Exhibit 27- Alexander Realtime Reporting LLC. Stating that they have sent to plaintiff electronic copy of plaintiff's deposition and also instructions on how to make corrections on the Errata Sheets.

6.) Plaintiff Exhibit 28, 28a, 28b, 28c, 28d, 28e, 28f, and 28g 8-paged Krystal Megan Delima Errata Sheet, certified, signed, dated and notarized, identified as.
plaintiff's

7.) Plaintiff Exhibit 35- Alexander Realtime Reporting LLC., a letter to Mr. Bryce Crawford instructing him to attach the Errata Sheets of Krystal Megan Delima to it original transcript.

Therefore, plaintiff prays for the court to grant plaintiff's Motion to Suppress All Parts of Plaintiff's Deposition Transcript. Plaintiff also prays for all the reliefs deemed just and fair and all its costs.

Respectfully Submitted by:



Krystal Megan Delima, Plaintiff / Pro Se
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Date: 12/11/2018